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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,751	02/20/2004	Raymond Anthony Joao	RJ455	3715
7590 12/11/2008 RAYMOND A. JOAO, ESQ. 122 BELLEVUE PLACE YONKERS, NY 10703				
EXAMINER				
BLOUNT, ERIC				
ART UNIT		PAPER NUMBER		
2612				
MAIL DATE		DELIVERY MODE		
12/11/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/781,751

Applicant(s)

JOAO, RAYMOND ANTHONY

Examiner

ERIC M. BLOUNT

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31, 33, 34, 39, 42, 44, 45 and 50-64 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on September 22, 2008 has been entered.

2. Claims 31, 22, 34, 39, 42, 44, 45, and 50-64 are currently pending. Claims 63 and 64 are new.

Information Disclosure Statement

3. The information disclosure statement (IDS) submitted on September 22, 2008 was filed after applicant's request for continued examination. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

4. With regard to the miscellaneous letter submitted by applicant on May 7, 2008. Examiner has made note of the document and it has been placed in the file.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection

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is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 63 and 64 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 42, 51, and 52 of U.S. Patent No. 7,397,363 in view of U.S. Patent No. 6,542,077 and claim 1. With regard to claims 63 and 64 examiner recognizes that the claims recite the limitation "a first processing device, wherein the first processing device at least one of monitors and detects an event regarding at least one of a fuel cell, a fuel cell temperature measuring device, a fuel cell by-product measuring device, and a fuel cell output measuring device, **of, located at, or associated with, a premises or vehicle**"; while patent '363 does not explicitly disclose the fuel cell limitations, the patent shows in claim 42, "a first processing device wherein the first processing device at least one of monitors and detects an event regarding at least one of a premises system, a premises equipment system, a premises component, a premises device, a premises equipment, and a premises appliance of a premises". Similar limitations are set forth with regard to a vehicle in patent '077. Since the instant invention discloses that the claimed limitations are associated with of, located at, or associated

with a premises or vehicle, the limitations are the equivalent of premises or vehicle equipments, devices, appliances, etc. Thus, the two references teach each and every limitation of the claimed invention.

Allowable Subject Matter

7. Claims 31, 33, 34, 39, 42, 44, 45, and 50-62 are allowed. The following is an examiner's statement of reasons for allowance: The prior art of record fails to sufficiently describe or suggest an apparatus comprising a first processing device, wherein the processing device generates and transmits a first signal to at least one of a fuel cell, a fuel cell temperature measuring device, fuel cell by-product measuring device, and a fuel cell output measuring device, wherein at least one of the devices is located at or is associated with a premises, wherein the first processing device is located at a location remote from the premises. The first processing device is responsive to a second signal from a second processing device located at a remote location, remote from the first processing device and the premises, and wherein the signal is transmitted over the Internet or the World Wide Web. The first signal is transmitted from the first processing device to a third processing device located at the premises and the third processing devices generates or transmits a third signal to at least one of a fuel cell, a fuel cell temperature measuring device, fuel cell by-product measuring device, and a fuel cell output measuring device. The first processing device or third processing device determines whether an action or an operation associated with information contained in the first signal is an authorized or allowed operation and if the action or operation is authorized or allowed, the third processing device generates and transmits a third signal in response to the first signal. These along with

further limitations set forth by the claims render the application allowable over the prior art of record.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC M. BLOUNT whose telephone number is (571)272-2973. The examiner can normally be reached on Monday-Thursday 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin C. Lee can be reached on (571) 272-2963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric M. Blount
Examiner
Art Unit 2612

/Eric M. Blount/
Examiner, Art Unit 2612